

Application No.: 09/762,497
Attorney Docket No.: FUK-81
Reply for Office Action Dated: May 6, 2004

REMARKS

Claims 1-7 are pending in the application and stand rejected.

Claims 3, 4, and 7 stand rejected under 35 U.S.C. §112, first paragraph, as being based on a disclosure that is not enabling, according to the Examiner. The Examiner states that the precise manner in which dry etching is performed in the film-forming method must be set out unambiguously in the claims.

Applicant has amended Claims 3 and 4 to specify sputter etching. No new matter is hereby being introduced with these amendments. Support for these amendments may be found in the original disclosure, for example, at Page 6, lines 3-21; Page 11, lines 13-20; and Page 15, lines 22 *et seq.*

Applicant notes that the test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation. (MPEP §2164.01). We believe that the claims need not specify the precise processing steps associated with sputter etching. The recitation of sputter etching is sufficiently definite and precise in regards to its meaning within the context of a film-forming lamination process. Additionally, we believe that the undue experimentation factors outlined in MPEP §2164.01(a) clearly weigh in favor of a finding that the disclosure is enabling with respect to the technique of sputter etching and that no undue experimentation is needed, particularly in consideration of the factors pertaining to the state of the prior art, level of one of ordinary skill in the art, and the level of predictability in the art as these factors pertain generally to the mature field of thin-film device fabrication and specifically to a lamination process employing sputter etching techniques.

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In view of the foregoing, Applicant believes that Claims 3, 4 and 7 are in compliance with 35 U.S.C. §112, first paragraph, and respectfully requests that this rejection be withdrawn.

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has amended Claim 1, in consideration of the comments offered by the Examiner. No new matter is hereby being introduced with these amendments. These amendments are fully supported by the original disclosure.

In view of the foregoing, Applicant believes that Claims 1, 2, 5, and 6 are in compliance with 35 U.S.C. §112, second paragraph, and respectfully requests that this rejection be withdrawn.

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,559,634 to Weber.

Applicant has amended Claim 1 to recite, inter alia, that at least one of the layers of the multilayered structure has a variable thickness. No new matter is hereby being introduced with this amendment. Support for this amendment may be found in the original disclosure, for example, at Page 13, lines 4-19 and Fig. 5.

Weber does not disclose a layer of variable thickness. In particular, Weber strictly discloses a fixed uniform thickness for layers 20 and 22 of optical stack 16.

In view of the foregoing, Applicant believes that Claim 1 and Claims 2, 5, and 6 dependent therefrom are patentable over Weber and respectfully requests that this rejection be withdrawn.

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Claims 3, 4, and 7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Weber in view of JP-0145124 to Fuji.

Applicant has amended Claim 3 to recite, inter alia, that at least one of the first medium layer and the second medium layer has a variable thickness. Applicant has likewise amended Claim 4 to recite, inter alia, that at least one of the first medium layer and the second medium layer has a variable thickness. No new matter is hereby being introduced with these amendments. Support for these amendments may be found in the original disclosure, for example, at Page 13, lines 4-19 and Fig. 5.

Applicant believes that base Claims 3 and 4, as amended, are patentable over Weber in view of Fuji for reasons similar to those advanced above in connection with the rejection of Claim 1 over Weber. The noted deficiencies of Weber are not overcome by the teachings of Fuji. In view of the foregoing, Applicant believes that Claims 3, 4, and 7 are patentable over Weber in view of Fuji and respectfully requests that this rejection be withdrawn.

Applicant believes that the application is now in condition for allowance and respectfully requests favorable action in accordance therewith.

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If the Examiner has any questions or comments that would advance prosecution of this case, the Examiner is invited to call the undersigned at 260/484-4526.

Respectfully Submitted,



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RJK/jrw2

Enclosures: Amendments to the Claims
(3 Sheets)
Explanatory Cover Sheet - Page 1
Petition for Extension of Time
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on: November 8, 2004.


Randall J. Knuth, Registration No. 34,644

November 8, 2004

Date